

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

11-25-85

COLDEN CARROLL  
Complainant

v.

DEPARTMENT OF STREETS,  
CITY OF PHILADELPHIA  
and  
OFFICE OF EMPLOYMENT AND  
TRAINING, CITY OF PHILADELPHIA)  
Respondents.

Case No. 81-CET-59

ORDER DECLINING TO ASSERT JURISDICTION

This case arises under the Comprehensive Employment and Training Act, 29 U.S.C. §§ 801-999, (Supp. V 1981).

Counsel for the Complainant filed exceptions to the July 23, 1982, decision of Administrative Law Judge (ALJ) David A. Clarke, Jr. of this Department. The exceptions centered on the ALJ's dismissal of Complainant's argument that the circumstances and means used by the Respondents to discharge the Complainant constituted "double jeopardy."

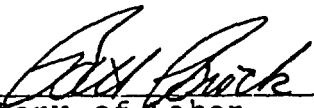
Complainant recognizes that the prohibition against double jeopardy is normally a criminal law concept, but urges that its acceptance by certain labor arbitrators in cases concerning adverse actions against employees supports its application in this case. The pertinent regulation concerning Public Service Employment (PSE) employees requires that PSE employees shall have the same working conditions as other employees similarly employed. 20 C.F.R. § 676.27(b)(1) (1985). The ALJ's decision details the specific violation of the Respondents' work rules

upon which Complainant's discharge was based. The Complainant does not dispute the evidence of his excessive absences from work and he does not contend that he was treated differently from other, non-PSE employees. Rather, he claims that his discharge after an interim suspension for the same infractions constitutes double jeopardy and that the delay from his last infraction of the rules until his discharge was unreasonable and thus warrants his reinstatement.

**Complainant's** exceptions do not persuade me that I should accept this case for review. I note that Complainant continued to enjoy the benefits of his employment with the Department of Streets until the time of his discharge, therefore he suffered no prejudice by virtue of the Department of Streets' "delay." His record of excessive absences is undisputed and greatly exceeds the number for which the Department of Streets rules established as grounds for discharge.

I decline to assert jurisdiction in this case.

So ORDERED.

  
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Secretary of Labor

NOV 25 1985

Dated:  
Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: **Colden Carroll**  
Case No. : **81-CET-59**  
Document : Order Declining to Assert Jurisdiction

A copy of the above-referenced document was sent to the following person on NOV 25 1985.

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